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# INDIGENOUS ISSUES

## Report of the working group established in accordance with Commission on Human Rights resolution 1995/32

**Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)**

1. By resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended intersessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) entitled draft United Nations declaration on the rights of indigenous peoples for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The working group held 6 formal meetings and 15 informal plenary meetings during the period from 28 January to 8 February. A total of 339 people attended the meetings of the working group, including representatives of 53 Governments, 3 United Nations organizations and 78 indigenous and non-governmental organizations.

3. The present report contains a record of the general debate. The debate which took place in the informal plenary meetings is reflected in the summaries of the Chairperson-Rapporteur.

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4. This report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people" by all Governments. In this report both terms are used without prejudice to the positions of particular delegations, where divergence of approach remains.

5. It is noted by indigenous representatives that all indigenous representatives and many Governments could accept the expression "indigenous peoples" used in the current text of the draft declaration.

## Opening of the session

6. The working group was opened by a representative of the Office of the High Commissioner for Human Rights (OHCHR). She welcomed the participants and made special mention of the Voluntary Fund for Indigenous Populations and its vital role in ensuring broad participation of indigenous peoples at United Nations meetings, including the working group. The representative thanked Governments who had donated to the Fund and encouraged donor Governments and others to continue to make donations to the Fund. She also noted that the General Assembly had recently amended the mandate of the Voluntary Fund so that it could assist indigenous peoples wishing to participate in sessions of the Permanent Forum on Indigenous Issues. She asked for assistance from donors, to ensure that the first session of the Permanent Forum, to be held in New York from 13 May to 24 May 2002, was a success and that a broad and diverse range of indigenous peoples could attend and participate.

7. At its first meeting, the working group elected by acclamation Mr. Luis-Enrique Chávez (Peru) as its Chairperson-Rapporteur.

## Documentation

8. The working group had before it the following documents:

Provisional agenda (E/CN.4/2002/WG.15/1);

Conference room papers 1 to 4 (E/CN.4/2002/WG.15/CRP.1-4).

9. The following background documents were made available to the working group:

Draft United Nations declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2/Add.1);

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its fifth session (E/CN.4/2001/85);

Report of the Working Group on Indigenous Populations on its nineteenth session (E/CN.4/Sub.2/2001/17).

**Participation**

10. The following States members of the Commission on Human Rights were represented: Argentina, Austria, Brazil, Canada, Chile, China, Cuba, Ecuador, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mexico, Peru, Poland, Russian Federation, South Africa, Spain, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zambia.

11. The following States Members of the United Nations were represented as observers: Australia, Belarus, Bolivia, Colombia, Denmark, Egypt, Estonia, Finland, Jordan, Latvia, Morocco, Nepal, New Zealand, Norway, Paraguay, Philippines, Romania, Tunisia, Ukraine, United States of America.

12. The following non-member States were represented as observers: Holy See, Switzerland.

13. The following specialized agencies and intergovernmental organizations were represented as observers: International Labour Office, World Bank, World Intellectual Property Organization.

14. The following indigenous and non-governmental organizations in consultative status with the Economic and Social Council were represented as observers:

**Indigenous organizations**

Aboriginal and Torres Strait Islander Commission, American Indian Law Alliance, Asociacion Nabguana, Indian Council of South America, Grand Council of the Crees, Indian Law Resource Centre, Indian Movement "Tupaj Amaru", Indigenous World Association, International Indian Treaty Council, International Organization of Indigenous Resource Development, International Work Group for Indigenous Affairs, Inuit Circumpolar Conference, National Aboriginal and Torres Strait Islander Legal Service Secretariat (NAILSS), Russian Association of Indigenous Peoples of the North (RAIPON), Saami Council.

**Non-governmental organizations**

Commission of the Churches on International Affairs of the World Council of Churches, Friends World Committee for Consultation, Interfaith International, International Centre for Human Rights and Democratic Developments, International Human Rights Law Group, International League for the Rights and Liberation of Peoples, International Organization for the Development of Freedom of Education (OIDEL), International Service for Human Rights, International Society for Threatened Peoples, Lutheran World Federation, Presbyterian Church USA.

15. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented as observers:

African Indigenous and Minority Peoples Organization, Ainu Association of Sapporo, Association for the Promotion of Batwa (APB), Assembly of First Nations, Association of Indigenous Peoples of the Sakha Republic, Association of Shor People, Association Tamaynut, Chickaloon Village Tribal Council, Chittagong Hill Tracts Peace Campaign Group, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ), Consultative Committee of Finno-Ugric Peoples, Cordillera Peoples Alliance, Fédération des Organisations Amérindiennes de Guyane, Finno-Ugric Consultation Committee, Fundación para la Promoción del Conocimiento Indígena, Foundation for Aboriginal and Islander Research Action, Indigenous Peoples and Nations Coalition, Lakota Nation, L'auravetlan Foundation, Louis Bull Cree Nation, Mejlis of Crimea Tartar People, Metis National Council, Montana Cree Nation, Movimiento Revolucionario Tupaq Katari de Liberación (MRTKL), Na Koa Ikaika o Ka Lahui Hawaii, Navajo Nation, Nepal Federation of Nationalities, Nepal Indigenous Peoples Development and Information Service Centre, Organización de la Nación Aymara, OSIGLI, Taller de Historia Oral Andina, TEA-Amaro Runa, Te Kawau Maro New Zealand, Tetuwan Oyate Sioux Nation Treaty Council.

**Organization of work**

16. In his opening statement, the Chairperson-Rapporteur thanked the participants for nominating him and announced that he would hold informal consultations with representatives of Governments and indigenous representatives on the organization of work.

17. After conducting broad consultations with national institutions and representatives of indigenous organizations, the Government of Mexico had reviewed its position and supported the draft declaration as adopted by the Sub-Commission. The representative of Mexico presented a proposal to the working group in response to perceptions of slow movement on the draft declaration. He reiterated the commitment of his Government to finalizing the draft declaration, as adopted by the Sub-Commission, within the Decade. The draft was the product of intense negotiations between indigenous representatives and experts, with State participation, and constituted the minimum acceptable consensus in order to fulfil the aspirations of indigenous peoples. On that basis, and noting a tendency, on behalf of some States to weaken rather than strengthen the text, the Mexican delegation supported the idea of the working group examining the declaration with a view to ratifying the consensus reached by the Sub-Commission on the main concepts, and afterwards examining less substantive paragraphs.

18. The Mexican delegation believed that the working group should reflect the evolution of the theme internationally, particularly after the World Conference against Racism, Xenophobia and Related Intolerance and the growing participation of indigenous peoples in their own countries and the growing awareness of their rights. The representative of Mexico further noted that the participation of indigenous peoples in the working group was a matter of principle and the working group must look for mechanisms that strengthened the open participation of indigenous peoples in conditions of equality with States, since it was they who would be directly affected by the results of its work. The Mexican delegation supported the idea of designating an

indigenous representative to work closely with the Chair in the conduct of work and encouraged the working group to meet more frequently so that the declaration could be adopted as soon as possible.

19. The representative of Mexico proposed that consideration be given to the establishment of a bureau, which should include indigenous people's representatives. He said that the proposal reflected the aspirations of indigenous peoples for more participation in informal and formal meetings. The proposal is contained in annex IV to the present report.

20. The representative of Guatemala said that it could accept the original text approved by the Sub-Commission. It considered that the reference to national legislation in the alternative text proposed by some Governments was unacceptable. She said that the declaration was like the Universal Declaration on Human Rights and the Convention on the Rights of the Child, or any other international instrument and should inspire new international or national legislation or the amendment of existing legislation when it did not guarantee indigenous rights. The reference to national law not only closed off opportunities for such amendment but also could permit new legislation that further restricted the rights of indigenous peoples. She observed that the alternative proposals were mainly motivated by concerns for guaranteeing the protection of third party rights, which she recognized as necessary. In order to resolve that difficulty, she proposed that consideration be given to a general article on the rights of third parties, which she believed would facilitate consensus and allow for the adoption of various articles as approved by the Sub-Commission. (See annex V for the text of the proposal.) She added that further precision of the rights recognized in the declaration could be dealt with in a subsequent convention. It was equally necessary to establish the legitimacy of third party rights.

21. At the second meeting, the Chairperson-Rapporteur gave a summary of the consultations held with States and indigenous representatives and proposed a programme of work. He proposed that three informal meetings should be set aside for a general debate on (a) participation and procedure, (b) collective rights and (c) land, territories and natural resources. The Chairperson-Rapporteur said he would convene a formal meeting to adopt appropriate decisions, should consensus be achieved. Following the general debate, informal meetings would be held to consider article 13, and then articles 6 to 11. The programme of work was adopted.

22. The Chairperson-Rapporteur informed the working group at its third meeting that he would have to return to his country before the end of the session, because of an exceptional situation that was beyond his control. He requested the understanding of the working group and committed himself to finding a solution that would serve the best interests of the process.

23. At the fourth meeting, the Chairperson-Rapporteur informed the working group about consultations that had been conducted in order to guarantee the functioning of the working group. He said that there was consensus among all participants to appoint Mr. José Valencia (Ecuador) to serve as vice-chairperson of the seventh session of the working group and to direct discussions in the absence of the Chairperson-Rapporteur. He also emphasized that that was a solution taken only for the current session owing to exceptional circumstances and that it did not constitute a precedent. Mr. José Valencia (Ecuador) was elected Vice-Chairperson by consensus.

24. At its fifth meeting, the Chairperson Rapporteur informed the working group that governmental delegations had extended an invitation to all indigenous representatives and non-governmental organizations to attend as observers the private meetings held by governmental delegations. He welcomed this invitation as a demonstration of transparency and political will aimed at strengthening confidence and dialogue between Governments and indigenous representatives. He invited indigenous representatives to attend those private meetings, in order to receive information first-hand about Governments' discussions aimed at narrowing the differences they had on various articles of the draft declaration. A government representative said it was an offer in good faith, to promote dialogue.

25. Responding to the invitation of the governmental delegations, to attend as observers governmental consultations held during the time designated for the plenary sessions, the indigenous caucus regretted that it could not accept the invitation as it did not wish to divert time, attention and resources away from the plenary sessions. It expressed a strong desire to develop a way of working together with full participation in the plenary sessions to achieve the main goal - the adoption of the draft declaration. Some indigenous representatives welcomed the invitation and attended the consultations.

## Informal debate

### (a) Participation and procedures

26. An informal debate took place on participation and procedures, in particular on the proposal presented by the representative of Mexico concerning the establishment of a bureau and its extension to include indigenous representatives.

27. Several indigenous representatives expressed appreciation of the concerns presented by Mexico regarding the current process. Several indigenous representatives also supported the Mexican proposal, saying that it would broaden the participation of indigenous peoples. Some indigenous representatives welcomed the proposal and suggested that it should be considered more carefully. An indigenous representative said that the declaration must be approached on the basis of a very high presumption of the integrity of the existing text and any proposed amendment to the text must satisfy the following criteria: (i) it must be reasonable; (ii) it must be necessary; and (iii) it must improve and strengthen the existing text. That representative welcomed the proposal of the Government of Mexico as a creative alternative to the present method of work. He felt that constructive dialogue could be carried out in that way and it should take place in the plenary.

28. Governmental representatives referred to the Mexican proposal as an interesting contribution that warranted further consideration if it assisted the process. Governmental representatives said that the current procedure seemed to be the most appropriate for the circumstances. Some recalled that it was also possible to use "friends of the chair" as an alternative to the bureau, as the working group had done previously. They mentioned that they were open to further suggestions that could help the process.

29. The Chairperson-Rapporteur suggested that the Mexican proposal concerning the establishment of a bureau should be included in the consultations he would hold in order to prepare the next session of the working group.

30. All indigenous representatives expressed concern about the meeting held by States in October 2001 and the non-paper that was elaborated. Many felt that the non-paper process undermined transparency. Many also said that the non-paper did not identify which countries were responsible for certain suggestions, making it difficult to engage countries in consensus building.

31. Governmental delegations addressed the concerns raised by indigenous representatives. They said that their non-paper process was conducted "in good faith" and helped States to collect their thoughts in a focused and coordinated fashion. They also said that those non-papers were part of a process aimed at the elaboration of discussion papers that the Chairperson-Rapporteur would submit to the working group for its consideration.

32. A number of indigenous representatives stressed the importance of ensuring full participation by all delegations in the working group by having discussion documents presented by Governments translated into all the official languages of the United Nations. Of specific concern was the lack of translation of unofficial documents into Russian. In this regard, it was suggested that Governments should provide Russian translations of such documents. The Chairperson-Rapporteur said that, in accordance with United Nations procedures, unofficial documents could only be translated into the three working languages.

33. The Chairperson-Rapporteur summarized the debate on procedural matters, saying that there was a perception that the working group had made no substantial progress until now and that some participants believed that changes in the methods of work could reverse that situation. He emphasized, however, that he was convinced such apparent lack of progress was due to a lack of political will and not to the procedures used by the working group up until now. He recalled that there was no precedent of a bureau in any other standard setting working group of the Commission on Human Rights. Nevertheless, a bureau could be established if the working group so decided, by consensus.

**(b) Collective rights**

34. All Indigenous representatives strongly underscored the significance of the collective dimension of their social, cultural, economic and political rights and in particular, the right to self-determination. Many Indigenous representatives noted that the right to self-determination was recognized under international law as a collective right, a right of peoples, and that indigenous title and other rights to lands, territories and resources were collective and communal or group rights. Some indigenous representatives pointed out the impact of racism on the expression of indigenous identity. Other indigenous representatives drew attention to the right to development as a collective right and the need to exercise this right in order to achieve economic, social, cultural and political development.

35. Indigenous representatives also addressed the rights and responsibilities of individuals within the context of collective rights. Several indigenous representatives spoke about the African Charter of Human and Peoples' Rights, which contains numerous references to collective rights. Every indigenous representative who spoke said that the collective rights of indigenous peoples were essential to indigenous societal relations and decision-making. Indigenous peoples also raised the important relationship between indigenous spirituality and other religious aspects of indigenous societies. Several indigenous representatives stated that Governments could not give or take away what had been given to them by the Great Spirit (known by many names in indigenous languages) - collective rights were sacred rights. In addition, several representatives of indigenous peoples also emphasized the importance of the inter-generational exercise of collective rights for their children.

36. Some government representatives said that there were specific constitutional and/or legal provisions and existing international human rights instruments recognizing collective and individual rights of indigenous peoples. Others acknowledged that indigenous peoples enjoyed both individual and collective rights. Other government representatives pointed out that collective rights of indigenous peoples should not be exercised in such a way as to impede the rights of other individuals. Some government delegations also acknowledged the collective dimension of the rights of indigenous peoples and that, in some instances, a collective or a group of persons could choose to exercise jointly their individual rights. Some government representatives noted that there was an integral link between the recognition of collective rights and the preservation of indigenous identity, culture, language and traditional knowledge. Finally, some Government representatives indicated that they were ready to consider the issue on an article by article basis, in order to determine whether the rights in the declaration were individual or collective or both. Several governmental representatives pointed out that collective indigenous rights were already recognized in a legally binding international instrument, International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. As signatories to that convention, the Governments concerned had recognized collective indigenous rights in various areas.

37. Summarizing the informal dialogue, the Chairperson-Rapporteur said that he had not heard any intervention that could be interpreted as denying the existence of collective rights as such. However, there was no agreement as to which rights were collective rights, including self-determination. He noted that there was a common understanding among the governmental delegations which had taken part in the debate and that they were ready to consider specific articles of the draft dealing with collective rights. He therefore suggested that the working group should examine specific articles of the declaration that related to collective rights at its next session.

### (c) Lands and natural resources

38. In their interventions on the provisions of the declaration concerning lands, territories and natural resources, all indigenous representatives emphasized the critical importance of their relationship with their lands, territories and resources for their survival, their spiritual, economic, social and cultural well-being, and the effective exercise of indigenous self-determination.

Indigenous representatives emphasized the unique spiritual nature of that relationship, which was very different from the Western European concept of land ownership and which extended to the surface and subsurface of the earth, inland waters and the sea, renewable and non-renewable resources, and the economies based on these resources.

39. Some indigenous representatives referred to "absolute title rights", as well as rights based upon treaties, agreements and other constructive arrangements, as a basis for international standards. One indigenous representative pointed out that recognition by the United Nations of the principle of permanent sovereignty over natural resources should apply to indigenous peoples.

40. Several indigenous representatives referred to their specific experiences including colonialism, the enduring legacy of discriminatory land and resources law and the absence of participation of indigenous peoples in the settlement of their land and territory claims. Many indigenous representatives also referred to numerous instances of forced resettlement and of forced appropriation of their lands, territories and resources, without their free, prior and informed consent. The absence of recognition of their collective rights and permanent sovereignty over their land, territory and natural resources was also reiterated by several delegations. Several indigenous representatives stressed that indigenous peoples' land, territory and resource rights were not limited by domestic law and policy, and that such an approach by States would conflict fundamentally with the purpose of international human rights standard-setting. The recent decision of the Inter-American Court of Human Rights in the case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua was referred to by some delegations in this regard, since it unequivocally affirmed that indigenous peoples have, as a matter of international law, collective rights to lands which they have traditionally owned, or otherwise occupied or used. Several indigenous representatives referred to related provisions in human rights instruments, including article 17 of the Universal Declaration of Human Rights, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 27 of the International Covenant on Civil and Political Rights, as well as relevant jurisprudence of the human rights treaty bodies, in particular that of the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. Many indigenous representatives urged the adoption of the provisions in the draft declaration dealing with lands, territories and natural resource rights, particularly articles 25 to 30, in their present form.

41. An indigenous representative spoke of the important United Nations workshop on indigenous peoples and the private sector which he had chaired in December 2001. He said that participants in the working group should reflect on the resolution on the right to development and other relevant resolutions adopted at the workshop, in contemplating those issues in the draft declaration. The report and resolutions of the workshop were submitted to the working group for its consideration.

42. A government representative said that her Government recognized the special relationship between indigenous peoples and their lands and natural resources. She believed that there was general agreement that the return of land, where possible, was a way forward. Governments, however, must balance return of land with managing natural resources at the national level. She called for the development of a comprehensive article in the draft declaration regarding indigenous peoples and their land. Another government representative stated that

although it recognized the special relationship that indigenous peoples had with their lands, his Government considered articles 26 and 27 problematic. In his opinion they provided for exclusive rights to all land and resources and constituted a denial of third party rights. He said that retrospective application of indigenous rights should not be contemplated as compensation for colonization, which happened a long time ago.

43. A government representative said that indigenous rights must be balanced with other national needs and that international instruments dealing with indigenous rights must be interpreted under many different domestic legal systems. He also noted that there was no retroactive application of the recognition of rights and that rights were applied under the laws of the nation State.

44. In summarizing the debate, the Chairperson-Rapporteur noted that there was broad recognition and respect for the particular relationship between indigenous peoples and their lands. Some States remained concerned about balancing indigenous rights to land and natural resources with national interests and third party interests. There were also concerns about retrospective application of rights to land. He emphasized that for some participants there was still a need to discuss specific aspects that required further clarification and which might need to be included in the draft declaration, as it did not cover all of the concerns raised. He believed that land was central to the draft declaration and the work of the working group and urged participants to engage in further dialogue in order to take that matter forward.

**Informal discussion of articles**

45. The working group discussed in informal meetings article 13 and then articles 6 to 11. At the beginning of these discussions, the Chairperson-Rapporteur said that the working group would have an opportunity to consider substantive proposals. He drew the attention of participants to previous reports of the working group, in particular those of the second and fifth sessions (E/CN.4/1997/102 and E/CN.4/2000/84), which contained an account of the general positions on those specific articles. He invited participants not to restate their positions but to present concrete proposals for discussion. In particular, he asked governmental delegations to continue informal consultations with a view to bringing their positions closer together.

46. The Chairperson-Rapporteur received documents for discussion on articles 13, 6, 9, 10 and 11. The content of those papers will be explained in the following paragraphs. In all those documents the term "peoples" appears between brackets. Annex I to the present report contains a note explaining the different positions of governmental delegations with respect to the use of the term "peoples" in the proposals they presented. It is noted that all indigenous representatives and many governmental delegations can accept the use of the term "indigenous peoples".

47. In the general discussion on articles 13, 6, 7, 9 and 10, indigenous representatives reiterated their strong opposition to focusing discussion on any text other than the original text of the declaration approved by the Sub-Commission and restated their commitment to the original text. Some indigenous representatives said that they were prepared to discuss proposals and submissions in a constructive and positive manner in order to strengthen the Sub-Commission text. The indigenous representatives submitted a statement to the Chairperson-Rapporteur regarding the documents provided by Governments for discussion on articles 13, 6, 9 and 10.

The indigenous participants stated that the government documents did not reflect a consensus by the States, but, as clarified by some State representatives, they were a compilation of proposals and not a presentation of alternative text.

48. All indigenous representatives objected to the bracketing of "peoples" in the proposed text, referring to the earlier discussions on collective rights and self-determination and invited Governments to join those who now supported the term "peoples" in the text approved by the Sub-Commission. Indigenous representatives strongly objected to the inclusion of the proposed government references to other conventions in the proposed government amendments to the text of the draft declaration (annex I). Indigenous representatives stated that the use of such terms as "reasonable" "where necessary" and "ensure rights" diminished State obligations and were unacceptable.

**Article 13**

49. The Chairperson-Rapporteur submitted to the working group a document on article 13 of the draft declaration. This document had been drafted by several governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 13 and comments on the proposal. The alternative language for article 13, as presented by a number of Governments, is included in annex I.

50. The document for discussion on article 13 stated that some States could accept article 13 as originally drafted. A number of States could dispense with a specific reference to balancing indigenous and third party interests in that article, as long as a new general paragraph on third party rights was included. The document also suggested that "sacred places" be replaced with "sacred sites", in accordance with usage in recent documents. The document also contained an explanatory note on the term "indigenous peoples" in the context of article 13.

51. A government representative offered a detailed explanation of last year's discussion paper and noted that there was strong support for an article 13 that supported the rights to religion and culture. Some States could accept article 13 as drafted, while other States had raised the issue of trying to balance indigenous peoples' rights with third party rights, referring to examples in domestic laws. It was noted that States had obligations to examine all international laws that they had signed and that their concerns needed to be dealt with in an open and fair manner. A proposal for a new paragraph on third party rights was put forward in order to address that issue, as it appeared in many articles of the draft that could otherwise be adopted without changes. Some government delegations reiterated their support for the rights of indigenous peoples and noted that the rights in article 13 were already guaranteed under other international instruments. A government representative said that, while supporting the principles expressed in article 13, he wanted the recognition of the rights of others to be taken into account. He noted that other international instruments such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial Discrimination, allowed for limitation of rights that might impose on the rights of others. Some government delegations supported additions such as "reasonable" and "subject to domestic laws" in the text of article 13 and suggested "make best efforts" be used instead of "effective measures", which they believed was not realistic. It was noted that the protection of sacred sites was a combined

responsibility. Some government representatives considered that the formulation "subject to domestic law" was not acceptable because it undermined the overall goal of the process, which was to develop a universal declaration.

52. All indigenous representatives reaffirmed their commitment to the original text and welcomed the fact that many Governments had declared that they were ready to accept article 13 as approved by the Sub-Commission. A number of indigenous representatives stated they were prepared to engage in dialogue to move the discussion forward, as long as there was an improvement to the text. An indigenous representative, reflecting on the government proposal to add "and associated funerary objects" to article 13 after "human remains", believed that the proposal would strengthen the text and supported the proposal with a slight rewording, such as "and associated and unassociated funerary objects". One indigenous organization referred to the proposed anonymously offered language "and associated funerary objects" and the proposed replacement of "sacred places" with "sacred sites". Both proposals were worth considering. The first recognized that funerary or burial items and implements were an important aspect of many indigenous societies and peoples. The second was consistent with other usage concerning indigenous sacred sites. It was noted that both proposed changes were reasonable and actually strengthened the text. Indigenous representatives expressed concern that the proposal made by Governments had 25 sets of brackets in two short paragraphs, rendering it incomprehensible as a basis for serious discussion. Other indigenous representatives added that the proposal was a year old and did not reflect evolution of thought on article 13. Numerous indigenous representatives underscored the fundamental importance of article 13 regarding access to sacred sites and use and control of cultural and ceremonial objects, as well as the right to repatriation of human remains.

53. Indigenous representatives objected to the insertion of "subject to domestic laws", stating that the inclusion of such language would narrow their right to maintain, protect and have access to their religious and sacred sites. Indigenous representatives stated that any State prescription of domestic law would have to be consistent with international human rights law pertaining to indigenous peoples. Other indigenous representatives stated that the proposal diluted basic minimum human rights standards, and that in many cases there were no domestic laws that protected indigenous peoples, or current laws were inadequate. Indigenous representatives said that the reason they were at the working group was to set new international standards and that international law should not be subordinate to domestic law but, rather, guide and influence domestic law. Additionally, several indigenous representatives pointed out that there was already a reference to international human rights standards in article 1 and other articles of the draft. Many indigenous representatives voiced strong opposition to the proposal by some Governments to insert a new paragraph concerning "third party rights". They noted that the subjects of the declaration were indigenous peoples, not third parties. Several indigenous representatives explained how third party interests had been a dominating factor in the loss of indigenous lands, including sacred places. In many cases, such loss had been caused by discriminatory laws and practices of land distribution by States. Indigenous representatives were concerned that the States did not fully articulate their concerns, during the formal sessions, about the text approved by the Sub-Commission. Indigenous representatives also noted that article 45 of the declaration made reference to the Charter of the United Nations, which embrace the promotion and protection of all human rights. They reminded all participants that the principal aim of article 13 was the practise of indigenous spirituality. Many indigenous representatives

stated that they did not support the introduction of the phrase "in accordance with human rights standards" and emphasized that each article must be read in context with the other articles of the draft declaration. They pointed out that article 1 of the declaration referred to "international human rights law" and article 2 provided that "Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights". They added that all other qualifying and subjective language, such as "reasonable", "where necessary", and "ensuring rights" rather than affirming and guaranteeing them, were unacceptable.

54. The Chairperson-Rapporteur noted progress in the dialogue on article 13 and that there was still no consensus on the text. He therefore proposed to close discussions on this article and to come back to it at a later stage.

55. The Chairperson-Rapporteur submitted to the working group a document on article 6 of the draft declaration, a document drafted by some governmental delegations, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 6 and comments on the proposal. The alternative language for article 6, as presented by a number of States, is included in annex I.

**Article 6**

56. The document for discussion on article 6 stated that some States accepted the language of article 6 as currently drafted. States that had participated in the preparation of the discussion paper had done so with the intent of clarifying and improving the original text. The explanatory note on the term "indigenous peoples", set out in annex I, applied to article 6. Some States were uncertain as to the basis of a "collective" right to live in peace and freedom. Some States were unclear about the actual content of a "right to peace" and "right of security". In regard to the latter, some States noted that it was an individual, rather than a collective right in international law. A number of States considered that the meaning of the expression "distinct peoples" was unclear. Some States considered that the phrase "full guarantees against genocide" was unclear. They would prefer language reflecting the definition of genocide in the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, which included forcible removal of children. Some States were concerned that the original wording on removal of children was drafted too broadly and could therefore preclude the adoption or transfer of custody of indigenous children in the best interests of the child. Some States believed that the expression "mental integrity" was unclear. They pointed out that it was not a defined term in international law.

57. Most government delegations supported the inclusion of a new article concerning the rights of the child generally and said such an article must make specific mention of particular principles contained in the Convention on the Rights of the Child, as well as its protocols. They also supported the inclusion of a general provision on the rights of the child, or the inclusion of a general provision, as well as specific mention in relevant articles. A few government delegations believed that higher standards could be set than those that currently existed in international law. A government representative expressed the view that the notion of "physical and mental integrity" is already included in existing international human rights law, in particular article 1 of the Convention against Torture. Thus it should not be problematic to retain the reference to "physical and mental integrity".

58. It was noted by the Chairperson-Rapporteur that some Governments believed it was not necessary to make references to other international instruments, whereas others thought it was highly desirable to do so. One government representative noted that there was no collective right to "freedom, peace and security" but was supportive of its being identified and included. Another government representative supported the rights of indigenous peoples as individuals to enjoy "freedom, peace and security" but reiterated that it was not currently recognized as a collective right. Some States had questioned the meaning of "distinct peoples", as used in article 6, in international law and noted that definitions of genocide should be based on the 1948 Convention. A government representative, having listened to the indigenous caucus position urging that no references be made to other international instruments, reconsidered its own position and concurred.

59. Some government delegations questioned the development in the original text of "new" human rights, in particular "collective rights", such as a "collective right to freedom", and questioned whether those proposed "new rights" established a "passive duty" of States. Some government representatives asked for clarification of the term "violence" in the context of article 6. One government representative believed that "violence" should only refer to "criminal violence". Some government representatives sought further clarification of terms such as "distinct peoples" and noted that it was difficult to deal with terms not previously used in international law. Some government representatives did not support the proposal from some States that "integrated with other inhabitants of the State" should be added to the original text.

60. Some government representatives noted that the rights referred to in article 6 were in fact the basic human rights of all people and also that there was considerable scope to improve and strengthen the article. They suggested that alternative language might set higher standards and provide for better understanding of those rights.

61. A government representative noted that a significant majority of States were in favour of adopting article 6 as drafted by the Sub-Commission.

62. All indigenous representatives strongly endorsed article 6 as adopted by the Sub-Commission, although some were prepared to discuss proposals that strengthened the text. They stressed that the discussion paper presented by States was an arbitrary and piecemeal compilation of already existing human rights instruments and did not improve the text of article 6. As the United Nations declaration would be an aspirational document, many indigenous representatives believed it was not necessary to refer to specific human rights instruments and that to do so would have the effect of limiting the scope of the declaration to those States which had ratified specific conventions. Indigenous representatives stated that there was, as yet, no demonstrable need to duplicate in the declaration the language of existing human rights instruments. An indigenous representative responded to the States' discussion paper by stating that collective rights were established in both domestic and international law, in particular the 1966 Covenants and in relation to the right to self-determination, ILO Conventions Nos. 107 and 169 and the African Charter on Human and Peoples' Rights. Several indigenous representatives said that all States must recognize the collective rights of indigenous peoples as the declaration was intended as an antidote to the past and continuing reality that indigenous peoples had been subjected to forced assimilation, integration and the denial of their rights to determine their own way of life and their destinies as nations/peoples.

63. Indigenous delegations believed that the substitution of the language "full guarantees against genocide" with "shall not be subjected to any act of genocide" represented a fundamental diminution of the Sub-Commission text. Furthermore, it removed any requirement on the part of States to provide protection against and redress for acts of genocide. Indigenous representatives argued that the attempt by some States to narrow the scope of the genocide convention was extremely troubling. Indigenous representatives stated that the requirement to prove "intent" had contributed to the ineffectiveness of the Genocide Convention and that it would be unconscionable for States to knowingly introduce similar elements into the declaration. One indigenous representative supported the concept of "economic genocide" in article 6. An indigenous representative focused upon the question of "specific intent" being proposed by one Government and vigorously opposed that restriction. Indigenous representatives stressed that the need to prove "a specific intent" was notoriously difficult to fulfil and was not designed to deal with issues relating to indigenous child custody, foster care and adoption. Indigenous representatives emphasized that States should be mindful of the fact that there was a distinction between child custody placement and the removal of indigenous peoples' children with intent to assimilate them.

64. The Chairperson-Rapporteur concluded the debate on article 6 by noting that the clarification of their positions by States and the comments from indigenous representatives made it easier for participants to understand each others' positions. The Chairperson-Rapporteur said that there appeared to be three principal issues regarding article 6 on which there was still no consensus: the issue of "collective rights", in paragraph 1 of article 6; the appropriateness of the reference to and interpretation of "genocide" and proposals to refer to the 1948 Convention on Genocide for additional legal precision; and the legal nature of terms such as "physical and mental integrity", "violence" and "distinct peoples"

65. On paragraph 2 of article 6, the Chairperson-Rapporteur said that he had not noted any disagreements on the other issues concerning individual rights, with the exception of the term "physical and mental integrity". He noted general agreement among States on the development and addition of a new article on indigenous children with a reference to the Convention on the Rights of the Child and its two protocols, although there were opinions contrary to including references to international instruments in the declaration and to the content of the proposed addition. The Chairperson-Rapporteur said that he believed the debate had provided a good basis for future discussions.

**Article 9**

66. The Chairperson-Rapporteur submitted to the working group a document on article 9 of the draft declaration, drafted by governmental delegations, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 9 and comments on the proposal. The alternative language for article 9, as presented by a number of States, is included in annex I.

67. The document for discussion on article 9 stated that some States accepted the language of article 9 as it appeared in the original text. Some of the States that had participated in the preparation of the discussion paper had done so with the intent of clarifying and improving the original text. The explanatory note on the term "indigenous peoples", is set out in annex I.

Some States were not clear on the existence of "a right to belong", in international law, or of its content. States discussed the intent of article 9 and it was generally understood that it is based on the right of freedom of association. The particular aspect of freedom of association addressed in article 9 is the freedom of indigenous individuals or peoples to belong to indigenous collectivities. Therefore, the role of the States is one of non-interference. Nonetheless, some States believed it necessary to strike a balance between their national human rights obligations and non-interference. Some States were unclear as to the meaning of the term "nation" in this context and questioned whether it referred to the nation-State, or to an indigenous nation, or possibly an "ethnic minority". Some States were unclear as to how a "people" can belong to an indigenous "community" or "nation" and asked which was the larger collectivity? All government delegations agreed that members of indigenous collectivities should not be subject to discrimination as a result of such membership. The brackets around language pertaining to discrimination and disadvantage in the Governments' proposal reflected States' search for the best protection. Some States considered that the issue of discrimination was adequately addressed in proposed article 2 as reflected in annex I to the 2001 report of the Chairperson-Rapporteur, which would apply to the entire declaration and therefore this did not need to be addressed in article 9. Some States noted that article 9, article 32 and article 8 were related. In the context of indigenous traditions and customs as referred to in the first sentence of the alternative language, States discussed a proposal to include the expression "where those traditions and customs are consistent with international human rights standards". After deliberation, States agreed that the inclusion of such an expression was unnecessary. States felt that their concerns would be adequately addressed in the context of the draft declaration as a whole, and in particular articles 1 and 45.

68. Several indigenous representatives expressed appreciation that some Governments could accept the original Sub-Commission text of article 9 and encouraged other States to do the same, noting that "the right to belong" was an evolutionary standard. Several indigenous representatives considered it part of a broader right, as already contained in articles 2 and 32 of the Sub-Commission text, to define their members according to the customs and traditions of their peoples/nations. Many stressed that they were parties to internationally accepted and recognized treaties, agreements and other constructive arrangements, as nations with land, territory and resource rights, and as nations/peoples with distinct languages, foreign relations and government. One indigenous representative said that some indigenous peoples had historical recognition as nations/peoples. One indigenous representative underscored the significant and constructive statement by a government representative that to deny the inclusion of a "right to belong" in the draft declaration simply because such a right was not currently established in international law was contrary to the purposes of the present standard setting process. Indigenous representatives also welcomed the comments by several government representatives recognizing the contextual interpretation of the term "nation" and supporting the use of the term in article 9.

69. Many indigenous representatives stressed the importance of article 9 of the Sub-Commission text, since their peoples did not have recognition or had limited recognition as nations and communities, which deprived them of their human rights and fundamental freedoms as enshrined in international instruments. Many indigenous representatives stated they could not accept changes proposed by Governments since such changes would not provide a universally

acceptable standard for indigenous peoples. Many said they were not recognized as indigenous peoples/nations and that the level of recognition by many States through their domestic laws was discriminatory, inadequate and did not provide the necessary protection. Many indigenous representatives called for there to be no change to the Sub-Commission text.

70. The Chairperson-Rapporteur, summarizing the debate, said that the discussion on article 9 had shown a good degree of concurrence of the various positions. However, agreement was still needed on three main issues: (a) whether belonging to an "indigenous community or nation" constituted a right or an option; (b) regarding "nation" in the context of article 9, and its implications in international law; and (c) whether the question of "disadvantage" was ambiguous or sufficiently unclear as to prevent positive programmes in favour of persons belonging to indigenous communities or nations. The Chairperson-Rapporteur acknowledged the importance of examining article 9, taking into account other articles simultaneously, which could help build a broader consensus. Other sections of the declaration might shed light on the meaning of "nation". In the same fashion, the consideration of other articles might dispel doubts about the exact significance of "disadvantage".

71. The Chairperson-Rapporteur said that the debate had revealed that there was a good degree of agreement on article 9, but that further discussion was required in order to build a consensus. He further noted that it was difficult to find answers to questions on developing and new standards such as the "right to belong" and urged all participants to participate in further discussion on such matters. He had been pleased to hear positive comments regarding issues concerning the concept of "indigenous nations" and the active responsibility of States to "prohibit disadvantage".

**Article 7**

72. The Chairperson-Rapporteur opened the discussion on article 7, noting that it provided the occasion to hear some preliminary ideas and that further discussion would take place at a future session. He proposed that, as there was no government paper available, the discussion on article 7 should commence on the basis of the original draft of the Sub-Commission.

73. Some government representatives expressed agreement with the content of article 7 and said that, although the term "cultural ethnocide" had no precedent in international law, it should be seriously considered against the backdrop of indigenous experience and global events of recent times. A government representative explained that he was not specifically referring to "genocide" but to "cultural genocide", which focused on culture and belonging to specific ethnic groups. He also noted that the article was specifically about the elimination of culture, which needed to be retained in order to recognize rights of indigenous peoples. A government representative made a strong statement saying that there should be no "forced integration" or "assimilation" of indigenous peoples. A government representative noted that article 7 contained controversial matters which required further discussion, and suggested that terms must be clarified to facilitate movement towards the adoption of the declaration.

74. All the indigenous representatives voiced their strong support for article 7 of the Sub-Commission text. They emphasized that the overall purpose of the declaration was to establish standards for distinct peoples. It was not simply an exercise "mirroring" existing

international conventions, protocols, standards and domestic law. In many of their interventions, indigenous representatives noted that the specific purpose of article 7 was to address and/or prevent historical and contemporary acts of ethnocide and cultural genocide. Many indigenous representatives noted that article 7 was extremely relevant to part IV of the declaration, relating to lands, territories and natural resources. Many stressed that land was a key component of indigenous culture and dispossession of land was paramount to ethnocide. All strongly opposed the efforts to eliminate references to that important concept or to dilute it through the application of domestic law and policy. Many indigenous representatives pointed out that globalization, neo-colonization and militarization made that article particularly relevant because of their multiple negative effects, including dispossession of land, forced relocation, population transfer and cultural genocide.

75. A number of speakers cited the Rome Statute of the International Criminal Court which, in their opinion, expanded the crime of genocide beyond physical genocide to include ethnocide and cultural genocide. Some suggested that there was an inconsistency in the position of States that had ratified the ICC Statute and at the same time had reservations on article 7 of the draft declaration. Other speakers condemned acts resulting in forced assimilation into the dominant society, again underlining the need to retain the reference to cultural genocide in article 7. An indigenous representative spoke of the history and concept of cultural genocide and referred to the statements by a number of Governments involved in the drafting of the 1948 Genocide Convention. She said that, in many instances, acts of cultural genocide had preceded or accompanied acts of genocide. She considered that it was unacceptable for States that had committed acts of cultural genocide or genocide against indigenous peoples to seek now to undermine the provision on cultural genocide in the draft declaration. If they were allowed to do so, it would encourage repetitions of those grievous and heinous acts against indigenous peoples in the future. She indicated that States had at times implied that their official positions were consistent with high standards, but that they were willing to accept a lower standard for the purposes of reaching a consensus among States. However, she noted, consensus in violation of the purposes and principles of the Charter of the United Nations, as well as of the mandate concerning the draft declaration, was not a valid criterion for agreement.

76. In his closing remarks on article 7, the Chairperson-Rapporteur noted that discussion on that article would be resumed at the next session of the working group.

**Article 10**

77. The Chairperson-Rapporteur submitted to the working group a document on article 10 of the draft declaration presented by a number of States. The document had been drafted by governmental delegations participating in the working group, following a request by the Chairperson-Rapporteur. The document contained alternative language for article 10 and comments on the proposal. The alternative language for article 10 is included in annex I.

78. The document for discussion of article 10 stated that some States accepted the language of article 10 as it appeared in the original text. States that had participated in the preparation of the discussion paper had done so with the intent of clarifying and improving the original text. The explanatory note on the term "indigenous peoples", to be set out in annex I applied to

article 10. The term "individuals" had been added, in brackets, to cover instances where the interest in land might be vested in an individual. While there was general agreement on the underlying principles of article 10, a number of States believed that the purpose of the article should be clarified. Did it address temporary moves, permanent moves and/or expropriation? Many States noted that those issues were addressed in other articles, such as articles 7 (b), 11 (c) and 25 to 28. It would be necessary to re-examine those provisions on completion of the review of the draft declaration, to determine if there were overlaps, inconsistencies or omissions. A number of States believed that references to the terms "lands" and "territories" should be re-examined after agreement was reached on the meaning of those terms in the context of all provisions relating to lands.

79. All States agreed that indigenous peoples had the same rights as other members of their national communities with respect to relocation and removal. Given their special relationship with land, most States agreed that there might be circumstances in which they should be afforded additional protection. Hence the suggestion for the inclusion of "on at least the same basis as applied to other members of the national community". Some States noted that it might not in all circumstances be feasible to obtain the consent of indigenous peoples prior to a move, for example in the event of a natural disaster. Some States were concerned that the term "forcibly" might prevent a move even in emergency situations. That term had been bracketed to reflect that concern. Some States considered that the term "arbitrary" could be added to suggest that there must be a legitimate purpose for the move. That term had therefore been added in brackets. Some States noted that the term "compensation" might be interpreted in a restrictive manner to mean monetary compensation only. They suggested that the term "redress" might better address issues covered in article 10. A government representative said that compensation for loss of indigenous lands and territories needed to reflect the particular value and significance such lands had for indigenous peoples.

80. All indigenous representatives stressed the importance they placed on their special relationship to the land. All highlighted the need to retain the specific language of the Sub-Commission text, as article 10 was intended to address the particular act of forcibly removing indigenous peoples from their lands without free and informed consent. International law did not accept manufactured consent. Many indigenous representatives referred to their direct experience of being forcibly removed from their lands. Many indigenous representatives emphasized that many of the suggested changes by Governments did not reflect the original intent of the article. Many suggested that the changes did not improve the text, nor strengthen it. Other indigenous representatives stressed that the intent of article 10 and of the declaration was to provide protection to indigenous peoples, because at present there was inadequate protection of the collective rights of indigenous peoples. One indigenous representative thanked a number of Governments for their recognition of the significance of the profound relationship that indigenous peoples had with their lands, territories and resources. She noted that the objective of article 10 was to prevent the forced removal and relocation of indigenous peoples from their lands and territories, not to deal with natural disasters or public health and safety.

81. All indigenous representatives emphasized that owing to the special nature of their relationship to their lands, financial compensation did not provide adequate redress for the loss incurred. The notion of "just and fair" compensation for indigenous peoples did not merely

mean compensation based on "fair market value", as indigenous peoples' lands, territories and resources were not simply real estate. On the contrary, the profound relationship that indigenous peoples had with their lands and territories had critical social, economic, political, cultural and spiritual dimensions. In some cases, the return of land was the only means by which to provide redress and restore a people's ability to survive as a distinct people. In terms of compensation, States were reminded of the unique and particular status of land rights possessed by indigenous peoples. Indigenous peoples were distinct peoples who possessed a special, unique, particular and spiritual connection to the land and in some cases no other redress but restoration could be adequate.

82. The Chairperson-Rapporteur summarized the debate on article 10, indicating that, in his opinion, there was general agreement on including a provision to prevent the removal of indigenous peoples from their lands. However, he said, there were still questions on the meaning of "lands or territories", "forcibly", "consent" and "compensation". He observed that proposals to strengthen the text using the word "redress" instead of "compensation" had received positive support from many participants. Concern had been expressed about the use of the word "forcibly", since it could prevent the relocation of indigenous peoples for reasons of public health, disaster or other exceptional cause.

**Organization of the work of the next session**

83. The Chairperson-Rapporteur informed participants that, following consultations, he wished to propose that at its next session the working group consider the following clusters of articles: (a) 3, 31 and 36; (b) 25 to 30; (c) 7, 8 and 11. He said that intersessional preparations would facilitate the task of the next session.

84. In connection with the dates of the eighth session, the Chairperson-Rapporteur informed the working group that he had proposed 2 to 13 December 2002 and that there was agreement from the participants. He added that it was to be understood that the dates would not be changed, so as not to cause difficulties for delegations.

85. The Chairperson-Rapporteur informed the working group of the proposal of the indigenous caucus to set aside the first two days of the next session for their own consultations, making use of the interpretation services. He said that consultations on this and other proposals relating to the organization of work and use of conference services would be carried out by the Chairperson-Rapporteur during the intersessional period.

86. The representative of Mexico referred to the Mexican delegation's proposal concerning the organization of the work of the session. The proposal is contained in annex IV to the present report. Several States suggested that future reports of the working group should identify the positions and proposals of Governments on specific articles. A number of government representatives indicated that they supported the current working methods. The Chairperson-Rapporteur said that, in the light of his consultations with other delegations, he considered that the Mexican proposal would be the subject of discussion during the intersessional period.

87. In response to questions raised by delegations, the Chairperson-Rapporteur noted that consultation on all relevant matters during the intersessional period would be conducted in the most effective way so that all points of view were considered.

88. The Chairperson-Rapporteur informed the working group that States had agreed upon a new title for annex I. In consideration of different points made by participants concerning the inaccuracy of the previous title, he noted that since the annex was submitted by States, it was for them to determine the title, as had happened in previous years.

89. The Chairperson-Rapporteur noted that, at the next session, articles 3, 31 and 36 would be considered.

## Annex I

## COMPILATION OF AMENDMENTS PROPOSED BY SOME STATES FOR FUTURE DISCUSSIONS BASED ON THE SUB-COMMISSION TEXT[1]

### Explanatory note

There was no consensus on the term "indigenous peoples" at the working group on the draft declaration. Some States can accept the use of the term "indigenous peoples". Some States can accept the use of the term "indigenous peoples" pending consideration of the issue in the context of discussions on the right to self-determination. Other States cannot accept the use of the term "indigenous peoples", in part because of the implications this term may have in international law, including with respect to self-determination and individual and collective rights. Some delegations have suggested other terms in the declaration, such as "indigenous individuals", "persons belonging to an indigenous group", "indigenous populations", "individuals in community with others", or "persons belonging to indigenous peoples". In addition, the terms used in individual articles may vary depending on context. Some delegations have suggested that if the term "indigenous peoples" is used, reference should also be made to article 1.3 of ILO Convention No. 169. Hence, the bracketed use of the term "indigenous peoples" in the draft declaration is without prejudice to an eventual agreement on terminology.

**In the proposals that follow, references to the text of the original draft are in bold**

### Article 13

### (Alternative language)

*1.* ***Indigenous [peoples] have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies*** *[in accordance with human rights standards]. [Subject to domestic laws] [they have* ***the right.***] *[States should/shall, in consultation with indigenous [peoples] concerned, take reasonable measures]* ***to maintain, protect, and [have]*** *[reasonable] [to provide]* ***access*** *[for indigenous [peoples]]* ***in privacy to [their] religious and cultural sites,*** *and* ***[the right to] [to provide for] the [use and control of ceremonial objects and] repatriation of human remains*** *[and associated funerary objects].*

*2.* ***States*** *should/****shall*** *make best efforts* ***[take effective*** *[reasonable]* ***measures], in conjunction*** *[consultation]* ***with the indigenous [peoples] concerned,*** *to [ensure the right of indigenous [peoples] to] [ensure that indigenous [peoples] concerned can] preserve, respect and protect* ***indigenous sacred sites, including burial sites [ensure that indigenous sacred*** *sites,* ***including burial sites, be preserved, reserved and protected]*** *and/ where necessary to facilitate the use and control of ceremonial objects.*

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[1] The new title was agreed upon to more accurately reflect the fact that some States can accept the original draft as adopted by the Sub-Commission.

**Article 6**

**(Alternative language)**

***[Indigenous [peoples] have the [collective] right to live in freedom, peace and security [of person][as distinct peoples][or, if they choose, integrated with other inhabitants of the state.]]***

***Indigenous individuals have the right to life, liberty, and the security of person.***

***[Indigenous peoples [[and] individuals] ~~have the right to full guarantees against genocide or any other act of violence~~] shall not be subjected to any act of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, including the provisions relating to ~~the removal of indigenous children from their families and communities under any pretext~~ forcibly transferring children of the group to another group.]***

(Convention on the Prevention and Punishment of the Crime of Genocide, 1948)

***OR***

***[Genocide, as defined in the International Convention on the Prevention and Punishment of the Crime of Genocide, against indigenous [peoples] is a crime at international law. Acts of genocide constitute:***

***(a) Killing members of the group;***

***(b) Causing serious bodily or mental harm to members of the group;***

***(c) Deliberately inflicting on the group conditions calculated to bring about its physical destruction in whole or in part;***

***(d) Imposing measures intended to prevent births within the group; or***

***(e) Forcibly transferring the children of the group to another group; with the intent to destroy a racial, religious, national or ethnic group, including indigenous groups.]***

(Convention on the Prevention and Punishment of the Crime of Genocide, 1948, article 2)

***Indigenous individuals shall not be subject to torture or to cruel, inhuman or degrading treatment or punishment.***

(UDHR, article 5; ICCPR, article 7; CAT, article 3)

*[States recognize the right of indigenous individuals to the enjoyment of the highest attainable standard of physical and mental health, and shall take the necessary steps for the full realization of this right.]*

(ICESCR, article 12)

*OR*

*[States recognize that the enjoyment of the highest attainable standard of health for every human being, including indigenous individuals, is a fundamental goal that should be enjoyed without distinction of race, religion, political belief, economic or social condition.]*

(WHO Constitution and prior WHO resolutions)

**Proposed article 6.1**

*[States shall respect and ensure the rights and freedoms and special protections set forth in international law including in the Convention on the Rights of the Child [and its Protocols], to each indigenous child in their jurisdiction [and respecting the indigenous heritage of the child]. Indigenous children shall not be denied the right, in community with other members of their group to enjoy their own culture, to profess and practise their own religion, or to use their own language.]*

(Convention on the Rights of the Child, articles 1 and 30)

**Article 9**

**(Alternative language)**

*Indigenous [peoples] [[and] individuals] [have the right to belong] [may belong] to an indigenous [community] [or [indigenous] nation] in accordance with the traditions and customs of the [community] [or nation] concerned. [They shall not be subject to any discrimination as a consequence of their belonging to such [community] [or nation].] [No [disadvantage] [discrimination] of any kind may arise from the exercise of such a right.]*

**Article 10**

**(Alternate language)**

*Indigenous [peoples] [[and] individuals] should/shall not be [forcibly][arbitrarily] removed [or relocated] from [their][the] lands [or territories][which they traditionally own, occupy or otherwise use]. No such relocation [or removal] should/shall take place [without the free and informed consent of the indigenous peoples concerned][except on at least the same basis as applies to other members of the national community][after agreement [consultation] on][and on the basis of] [including] just and fair compensation and [should/shall take place], where possible, with the option of return.*

**The following text is a reproduction of the amendments proposed by Governments for future action, contained in annex I to the report on the previous session (E/CN.4/2001/85)**

In the proposals that follow, references to the text of the original draft are highlighted in bold.

**Article 1**

1. **Indigenous** [individuals] [and] **[peoples] have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and** [applicable] **international human rights [law]** [instruments].

[2. Indigenous individuals may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination.]

**Article 2**

**Indigenous individuals [and peoples] are free and equal to all other individuals [and peoples] in dignity and rights, and have the right to be free from any kind of [adverse] discrimination, in particular that based on their indigenous origin or identity.** [This does not preclude special measures as contemplated in article 1.4 of the International Convention for the Elimination of All Forms of Racial Discrimination.]

**Article 12**

1. **Indigenous [peoples] have the right to practise and revitalize their cultural traditions and customs** [in conformity with domestic laws]. [Recognizing this right,] [States should/shall facilitate the efforts of indigenous [peoples]]. **[This includes the right** [as far as practicable] **to maintain, protect and develop the [past, present and future] manifestations of [their] cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.**

2. States should/shall [make [best] [appropriate] efforts], [to] [promote] [facilitate] the return to indigenous [peoples] of their **cultural, [intellectual], and religious [and spiritual] property [taken without their free and informed consent]** [after the present Declaration comes into effect], **[or in violation of [their] laws, traditions and customs]** [and] [or] [in violation of relevant laws and regulations].

**Article 14**

**1. Indigenous [peoples] have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.**

[2. States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.]

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**Article 15**

**Indigenous** individuals, particularly **children, have the right to all levels and forms of education of the State** on the same basis as other members of the society. **[Indigenous peoples] have** the **right**, in consultation with competent authorities in the State, and in accordance with applicable education laws and standards, **to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning**.

**Indigenous children living outside their communities** should, where practicable, have **access to education in their own culture and language**.

States **[shall**/should] **take effective measures to provide appropriate resources for these purposes**.

**Article 16**

**The dignity and diversity** of **[indigenous peoples'] cultures, traditions, histories and aspirations** should be **appropriately reflected in education and public information**.

States **[shall**/should] **take effective measures, in consultation with the [indigenous peoples] concerned, to** combat **prejudice, eliminate discrimination and promote tolerance, understanding and good relations among [indigenous peoples] and all** other **segments of society**.

**Article 17**

**[Indigenous peoples] have the right to establish their own media in their own languages** and **to access all forms of non-indigenous media**, on the same basis as the other members of the society.

States **[shall**/should] **take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity**. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

**Article 18**

**[Indigenous peoples]** shall **enjoy fully all rights established under** applicable **international and national labour law**. States should take immediate and effective measures to ensure that indigenous children are protected from the worst forms of child labour.

**Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary**.

**Article 44**

**Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous [peoples] may have or acquire.**

**Article 45**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

## Annex II

## PROPOSALS BY INDIGENOUS REPRESENTATIVES

### Explanatory note on the collective rights of indigenous peoples

Since the establishment of the Working Group on Indigenous Populations in 1982, indigenous representatives have consistently asserted the critical collective dimension of our rights as peoples, as well as the crucial importance of accurately identifying indigenous peoples as "peoples" in the work of the United Nations. There can be no doubt that we are peoples, with distinct collective rights and distinct historical, political, social, cultural and spiritual identities that unite us. It is through the collective exercise of our right to self-determination that our languages, laws, values, customs, practices, traditions and institutions are maintained and manifest themselves. Our very identity as indigenous peoples is shaped by the dynamic balance between and linkage of our collective and individual rights. Exercise of our collective rights is not only critical to indigenous spirituality, but also to maintaining the inter-generational nature of all of our social, cultural, economic and political rights. We recognize and applaud those States that have given their unequivocal support for our collective rights.

A key element of indigenous collective rights is the profound social, cultural, economic and spiritual relationships of indigenous peoples with our lands, territories, resources and environment. These relationships of a collective nature are already recognized, e.g. ILO Indigenous and Tribal Peoples Convention No. 169, 1989, article 13, and are unique. Furthermore, group or collective dialogue, decision-making and other forms of political relations are a necessity in the context of the exercise of our right of self-determination and self-government.

To omit or deny our collective rights in the draft declaration would serve to severely undermine our most basic rights and status, as well as our integrity as indigenous peoples. It would contribute to the dispossession, exploitation, cultural genocide and genocide of indigenous peoples. It would be inconsistent with the internationally accepted view, confirmed in the 1993 Vienna Declaration and Programme, that "all human rights are universal, indivisible, interdependent, and interrelated". It would also run directly counter to the purposes and principles of the Charter of the United Nations and the draft United Nations declaration on the rights of indigenous peoples itself. The United Nations and its Member States have no authority to engage in such actions.

The declaration is not the first international instrument to attribute rights to peoples and groups, as well as to individuals. International law already recognizes the concept of "collective" rights, including the right to self-determination and the physical protection of the group as such through the prohibition of genocide. Therefore, it is erroneous, invalid and self-serving for States to argue in this working group that international law does not recognize any collective rights. To illustrate, the following international instruments, among others, affirm collective or group rights:

International Covenant on Civil and Political Rights (ICCPR);

International Covenant on Economic, Social and Cultural Rights;

International Convention on the Elimination of All Forms of Racial Discrimination (CERD);

UNESCO Declaration on Race and Racial Prejudice, (1978);

African Charter on Human and Peoples' Rights;

Indigenous and Tribal Peoples Convention, 1989, No. 169;

Convention on Biological Diversity;

The Universal Declaration on Cultural Diversity (UNESCO 2001);

The Declaration on the Granting of Independence to Colonial Countries and Peoples.

Furthermore, numerous domestic constitutions, legal decisions, legislation and policies affirm the collective rights of indigenous peoples. In addition, international human rights experts and other legal scholars confirm the existence of internationally recognized collective human rights. Both scholars and leaders have made specific reference to the growing support for these rights. For example:

> ... a number of important human rights are not rights of individuals, but collective rights, i.e. the rights of groups or of peoples. This is clear so far as concerns the right of self-determination. Apart from this right, there is the right of an ethnic group or of a people to physical existence as such, a right which is implicit in the provisions of the Genocide Convention of December 1948. Then also there is the collective right of certain groups or minorities to maintain their own identity [art. 27 ICCPR] ... A further illustration is that of the emerging principle that States should cooperate in the relief of peoples affected by disasters or disaster situations, such as those due to volcanic eruptions, drought and the shortage of food supplies.
>
> I. Shearer, Starke's International Law, 11 ed. (London: Butterworths, 1994), at p. 338.

> ... the situation of indigenous people must surely prompt us to ponder more deeply human rights as they are today. Henceforth, we must realize that human rights are not only the rights of individuals. They are also collective rights - historic rights.
>
> B. Boutros-Ghali, statement to the United Nations General Assembly, in Living History [:] Inauguration of the "International Year of the World's Indigenous People", (1993) 3 Transnat'l L. & Contemp. Probs. 168 at p. 170.

It is highly significant that the Human Rights Committee has requested a number of States to report as to how they are implementing, within their own countries, the right of indigenous peoples to self-determination. In this context, the Committee made specific reference

to article 1 of the International Covenant on Civil and Political Rights. Yet some States are still trying to deny the existence of indigenous peoples' inherent and inalienable collective human rights. As indicated in the Declaration of the World Conference against Racism (Durban, South Africa, 2001), the impacts of racism and racial discrimination are associated with the denial of collective and individual rights.

To omit or deny indigenous peoples their collective rights in the draft United Nations declaration on the rights of indigenous peoples would serve to perpetuate highly destructive strategies and effects concerning the rights, cultures and societies of indigenous peoples. Contrary to the principle of equality, it would negate our right to be different. As we have underlined, it is clear that the United Nations and its Member States have no authority to deny indigenous peoples' collective human rights. Furthermore, in the event of such actions, States would be failing to abide by the specific and ongoing United Nations mandate. From the outset, this mandate has authorized the elaboration of a declaration giving special attention to the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and differences in the situations and aspirations of indigenous peoples throughout the world and emphasizing the importance and special nature of the draft declaration as a standard setting exercise specifically for indigenous people.

**Third party interests**

**The proposal by a few Governments for the inclusion of third party interests and qualifications of rights by subjecting them to "domestic legislation" are not the norm, especially not in a declaration on the rights of indigenous peoples**

This is a back-door method of bringing in States and other third parties, especially corporate interests. States and private parties do not need any special protection. It is indigenous peoples who need to be protected from States and corporate interests because of the historical processes of colonization: external and internal, neo-colonization and globalization. Third party interests should not be included in this declaration as they are not usually referred to in declarations, which contain general statements of moral principles, nor is this current practice.

This exercise of strengthening the rights of indigenous peoples is based on historical processes that have limited their basic human rights and fundamental freedoms.

**Rights to health**

In answer to questions posed by Governments regarding article 6 of the draft declaration on the rights of indigenous peoples as drafted by the Sub-Commission, the indigenous caucus refers to the following information as relevant in clarifying the meaning of the phrase "physical and mental integrity".

"The right to the highest attainable standard of health, E/C.12/2000/4, CESCR General Comment 14, 11 August 2000.

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AND CULTURAL RIGHTS
Twenty-second session
Geneva, 25 April-12 May 2002
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"3. The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

"4. In drafting article 12 of the Covenant, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in the preamble to the Constitution of WHO, which conceptualizes health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. However, the reference in article 12.1 of the Covenant to 'the highest attainable standard of physical and mental health' is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

"7. Article 12.1 provides a definition of the right to health, while article 12.2 enumerates illustrative, non-exhaustive examples of States parties' obligations.

"8. The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

"Non-discrimination and equal treatment

"18. By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. The Committee stresses that many measures, such as most strategies and programmes designed to eliminate health-related

discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls General Comment No. 3, paragraph 12, which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

"Indigenous peoples

"27. In the light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, (19) the Committee deems it useful to identify elements that would help to define indigenous peoples' right to health in order better to enable States with indigenous peoples to implement the provisions contained in article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health."

**Articles 12, 13 and 14**

At the World Archaeological Congress 4, at Cape Town, South Africa, 1999 it was resolved:

In Recognition of the International Decade of Indigenous Peoples and in the year of the 50th anniversary of the Universal Declaration of Human Rights, WAC supports the established text in Part III, Articles 12, 13 and 14 of the United Nations Draft Declaration on the Rights of Indigenous People.

Indigenous representatives and some governmental delegations supported the current wording of articles 6, 7, 9, 10 and 13. Those articles are reproduced below.

"Article 6

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

Article 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 13

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected."

## Annex III

## ARTICLES 13, 6 AND 7 - COMMENTS AND AMENDMENTS PUT FORWARD BY INDIAN MOVEMENT "TUPAJ AMARU"

### Article 13

In accordance with universally recognized human-rights standards, indigenous peoples have freedom of thought and conscience, by virtue of which they have the collective and individual right to manifest, practise, develop and teach their traditional knowledge, spiritual customs and ceremonies and the right to protect and have access in privacy or in public to their sacred and religious sites, to use and safeguard ceremonial objects and to obtain reparation and restitution of human remains.

States parties to this Declaration undertake to take effective action, with the full consent of indigenous peoples, to uphold and promote these rights, guaranteeing full respect for sacred sites and ritual ceremonies, including burial sites in particular.

### Article 6

Indigenous peoples have the collective right to live in freedom, peace and security as nations with cultural diversity and distinct forms of social organization.

Protected by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, indigenous peoples shall not be subjected nor fall victim to crimes of genocide or any other acts of violence, and no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, including the removal or forcible separation of indigenous children from their families and communities.

States recognize the collective rights of indigenous peoples and undertake to take appropriate action to guarantee the full realization of the right of indigenous individuals and communities to a high level of health, physical and mental integrity.

### Article 7

Indigenous peoples have the collective and individual right to appropriate protection against any instance of genocide or cultural ethnocide, which qualify as crimes under international law, whether committed in peacetime or wartime. Prevention of, protection against and reparation for such crimes shall apply to:

(a) Any action which has the aim or effect of depriving them of their identity, threatening their physical or mental integrity, or denying them the right to enjoy, develop and transmit their cultural values to future generations;

(b) Any of the acts of genocide mentioned in the Convention on the Prevention and Punishment of the Crime of Genocide committed with the intent of destroying aboriginal communities, partially or completely;

(c) Any form of assimilation, alienation or integration into cultures or ways of life inimical to indigenous values and philosophy that is brought about by pressure, intimidation or the use of force;

(d) Any action designed to dispossess indigenous peoples of their lands and territories by violence and deny them the right to take advantage of the natural resources that they have been exploiting and occupying since time immemorial;

(e) Any forced population movement which has the aim or effect of denying indigenous families the ability to reproduce, in breach of the intrinsic right to life;

(f) Any forced modern evangelism or penetration of sects into aboriginal lands with the aim of imposing on indigenous peoples beliefs that are contrary to or incompatible with the indigenous spiritual outlook;

(g) Any racist propaganda or incitement to violence, hatred or terrorism that threatens the lives, dignity and security of indigenous peoples and nations.

6 February 2002

**Annex IV**

## PROPOSAL BY THE DELEGATION OF MEXICO FOR AN EXTENDED BUREAU/FACILITATING MECHANISM TO SUPPORT EXTENSIVE CONSULTATIONS WITHIN THE WORKING GROUP ESTABLISHED IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS RESOLUTION 1995/32

**Objective**

To establish an extended bureau/facilitating mechanism to support extensive consultations with a view to the adoption in 2004 of a United Nations declaration on the rights of indigenous peoples.

Membership

- The current Chairperson-Rapporteur;
- A governmental vice-chairperson (currently Ecuador);
- Two coordinators to represent indigenous organizations.

Mandate

1. To conduct extensive, open-ended consultations with all interested parties, governmental and non-governmental, during and between sessions of the working group in order to facilitate progress on the draft declaration.

2. To conduct extensive, open-ended consultations with all interested parties, governmental and non-governmental, on the definition of the working group's programme of work.

3. To see to it that draft reports submitted to the plenary of the group for consideration faithfully reflect the outcome of the extensive, open-ended informal consultations.

31 January 2002

## Annex V

## PROPOSAL BY THE DELEGATION OF GUATEMALA TO FACILITATE CONSENSUS ON SUNDRY ARTICLES OF THE DRAFT DECLARATION

### Background

The reference to national legislation in the alternative wording put forward by some Governments is unacceptable because this Declaration, like the Universal Declaration of Human Rights, the Declaration of the Rights of the Child and others, is intended to inspire new international or national legislation or the revision of current legislation that does not uphold or give full effect to the rights it proclaims. The reference to national legislation not only reduces the scope for review but also permits or concedes that new legislation may further restrict the rights of indigenous peoples.

The alternatives proposed in many articles are chiefly motivated by a concern to protect the interests of third parties.

To address this concern, consideration might be given to a general clause on the legitimate rights of third parties; this would facilitate consensus and allow a number of articles to be adopted in the form in which they were approved by the Sub-Commission.

The scope and precise limits of the rights set forth in this Declaration should be laid down in a later convention or binding agreement, and as and when national legislation is brought into line with the Declaration. The legitimacy and validity of the rights exercised by third parties should be established in the same way.

### Proposed wording

One form of wording that might offer a solution to the concern could be the following:

"While this Declaration does not of itself alter international or national standards, it does seek to promote consideration and reform of any standards that contravene or impede the full enjoyment of the rights which it sets forth, without prejudice to the legitimate rights of third parties."

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